

House, John

From: Berntsen, Teresa E
Sent: Monday, March 29, 2004 7:26 PM
To: a Phil Wayt (E-mail)
Cc: Lee, Lorraine; Ensign, Heidi E; Reynolds, Randy S
Subject: beer price posting rules for your review

Importance: High

Phil, attached is a preliminary draft of proposed changes to the beer price posting rules (we're still working on the wine posting rules). The first page lists what our goals are in the rule making. The last few pages are how the new rule would look without all the underline and strikethrough. We have not discussed the attached changes with executive management--we wanted your eye to help us develop language to bring to them.

We're hoping to have your input by the end of the week, please let me know if that's not realistic.

Thank you very much,

Teresa

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WAC
14-20 chang

PLAINTIFF'S EXHIBIT	
CASE NO.	CV04-0360P
EXHIBIT NO.	201

Resp to Costco RFP
886

Proposed changes to beer price posting rules to implement SB 6737 DRAFT 2 3-25-04

Purpose of rule changes:

- Implement changes made in SB 6737
- Combine and simplify rules
- Take out redundancy with RCWs (RCW 66.28.180)

WAC 314-20-100 Beer distributor and supplier price postings.

Redundant
with RCW

~~((1) Every beer distributor shall file with the board at its office in Olympia a price posting showing the distributor prices at which any and all brands of beer sold by such beer distributor shall be sold to retailers within the state.))~~

New
opening so
people know
what this
WAC is
about.
Definitions
for clarity.

RCW 66.28.180 requires beer distributors and suppliers to file price postings with the board.

(1) Definitions--For the purposes of this section:

(a) A beer supplier means a microbrewery, domestic brewery, certificate of approval holder, beer importer, or beer distributor licensee.

(2) Filing deadlines.

Rearrange
and reword
for clarity
and to
combine
WACs.

(a) Beer supplier filing deadlines	(b) Beer distributor filing deadlines
<p><i>[Following language from WAC 314-20-105(2), strike through and underlining maintained for comparison]</i></p> <p>((Filing date--)) <u>(i)</u> All price postings, distributor appointments, ((All)) written contracts, and memoranda of oral agreements must be received by the board not later than the twenty-fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of such filing.</p> <p><u>(ii) The board will allow up</u></p>	<p><u>(i)</u> All price postings must be received by the board not later than the tenth day of the month, and if approved will become effective on the first day of the calendar month following the date of ((such)) filing.</p> <p><u>(ii) The board will allow up to ((A)) an additional ((period, not to exceed)) five days ((, will be allowed)) for revisions of ((such)) postings to correct errors((,)) or omissions, ((ex to meet competitive prices filed during the current posting</u></p>

<p>to ((A)) an additional five days ((period will be allowed)) for revisions of ((such)) filings to correct errors and omissions ((or to meet competitive prices,)) filed during the current posting period, ((but)) if a revised contract or memorandum of oral agreement ((must be)) is ((on)) filed with the board not later than the first day of the month. ((in order to become effective on the first day of the following month: Provided, That t)) The board may in individual cases, for good cause shown, extend the <u>filing date</u> ((on which the filings required by the rules are to be received by the board.))</p>	<p>period, but)) <u>if</u> a revised posting ((must be on)) <u>is filed</u> ((at)) with the board ((office by)) not later than the fifteenth day of the month ((, in order to become effective on the first day of the next calendar month)). ((+ Provided, That t)) The board may in individual cases, for good cause shown, extend the <u>filing date</u> ((on which the filings required by the rules are to be received by the board)).</p>
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(c) When any price posting to be filed with the board under the provisions of this rule has been deposited in the United States mail addressed to the board, it ~~((shall))~~ will be deemed filed or received on the date shown by the United States post office cancellation mark on the envelope, ~~((containing it))~~ or on the date it was mailed if it ~~((proof satisfactory to))~~ is established to the satisfaction of the board ~~((establishes))~~ that the actual mailing occurred on an earlier date.

Clarify

Change to reflect electronic postings.

(3) **Filing date exceptions--**Whenever the ~~((tenth day of the month))~~ filing deadlines fall ~~((s))~~ on Saturday, Sunday, or a legal holiday, an original price posting may be filed not later than ~~((the close of business))~~ midnight the next business day.

Clarify and add "supplier" so rules can be combined.

(4) **No changes from previous month--**If ~~((In the event that))~~ a beer supplier or distributor ~~((determines to))~~ makes no changes in any items or prices listed in the last filed and approved ~~((schedule))~~ price posting, ~~((such))~~ these prices ~~((listed in the schedule previously filed and in effect, shall))~~ will remain in

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effect for each succeeding posting period until a revised or amended ((schedule)) price posting is filed and approved ((, as provided herein)).

Clarify language. Add "supplier" so rules can be combined. Delete reference to "special forms," as most postings now electronic.

(5) ~~((Provision for filing of t))~~ Temporary price reductions--
~~((In the event))~~ If a beer supplier or distributor ~~((elects to))~~ files price postings that list ~~((ing))~~ selected items on which prices are temporarily reduced for one posting period only, ~~((such filing))~~ these price postings ~~((shall be made on special forms provided for such purpose and))~~ must clearly reflect all items, the selling price ~~((thereof))~~, and the posting period for which the price reductions will be in effect. At the expiration of the posting period during which ~~((such))~~ the reductions were in effect ~~((ive))~~, the special filing will become void and the last regularly filed and effective price ~~((schedule))~~ posting ~~((shall))~~ will again become effective ~~((until subsequently amended pursuant to regular filing dates))~~.

Redundant with RCW

~~((5)) Each price posting shall be made on a form prepared and furnished by the board or a reasonable facsimile thereof, and shall set forth.~~

~~((a)) All brands, types, packages and containers of beer offered for sale by such beer distributor.~~

~~((b)) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.)~~

~~((6)) No beer distributor shall sell or offer to sell any package or container of beer to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer distributor and then in effect.)~~

~~((7)) Quantity discounts are prohibited. No price shall be posted which is below acquisition cost plus ten percent of acquisition cost.~~

~~((8)) Wholesale prices on a "close out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the distributor who posts such a close out price shall not restock the item for a period of one year following the first effective date of such close out price.~~

Clarify language. Add definition of a distributor appointment for clarity.

~~((9)) (6) Distributor appointment changes--If an existing written contract or memorandum of oral agreement between a domestic winery, certificate of approval holder, wine importer, or wine~~

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~~distributor and a distributor, as filed in accordance with WAC 314-24-200, is~~

(a) A distributor appointment change is when a supplier terminates and appoints another distributor for a geographic area, for certain brands of beer and/or wine, or terminates and reappoints the entire contract.

(b) A beer supplier must notify the board if any of the contracts or agreements listed in WAC 314-20-100 are revised or terminated by either party. ~~((, and a new written contract or memorandum of oral agreement is made by such a supplier with another wine distributor in the affected trade area, the board, after receiving such new written contract or memorandum of oral agreement, and a corresponding wholesale price posting from the newly designated wine distributor, may put such filings into effect immediately.))~~
The board may immediately authorize a price posting if a distributor assumes the wholesale price postings from the previously appointed distributor. ~~((Provided, That p))~~

(c) Prices and other conditions of ~~((any such filings which are))~~ price postings in effect at the time of ~~((such))~~ the termination ~~((shall))~~ may not be changed ~~((prior to the next applicable filing period))~~ until subsequent filings are submitted to the board and become effective ~~((per WAC 314-20-100))~~.

~~((10) The board may reject any price posting which it deems to be in violation of this or any other regulation or portion thereof which would tend to disrupt the orderly sale and distribution of beer. Whenever the board shall reject any posting the licensee submitting said posting may be heard by the board and shall have the burden of showing that said posting is not in violation of regulation and/or does not tend to disrupt the orderly sale and distribution of beer. Thereupon if said posting is accepted it shall become effective at the time fixed by the board. If said posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this regulation.~~

~~((11) All price postings filed as required by this regulation shall at all times be open to inspection to all trade buyers within the state of Washington and shall not within any sense be considered confidential.~~

Resp to Costco RFP

890

Delete
language
redundant
with RCW.

~~(12) Any beer distributor or employee authorized by his distributor employer may sell beer at the distributor's posted prices to any authorized retail licensee upon presentation to such distributor or employee at the time of purchase of a special permit issued by the board to such licensee.~~

~~(a) Every Class authorized retail licensee upon purchasing any beer from a distributor, shall immediately cause such beer to be delivered to his licensed premises, and he shall not thereafter permit such beer to be disposed of in any manner except as authorized by his license.~~

~~(b) Beer sold as provided herein shall be delivered by such distributor or his authorized employee either to such retailer's licensed premises or directly to such retailer at the distributor's licensed premises. Provided, however, That a distributor's prices to retail licensees shall be the same at both such places of delivery.~~

Clarify
language.

~~((13)) (7) Price postings for new distributors--When the board issues a new beer distributor((s)) license ((is issued by the board)), the ((holder thereof)) licensee may file an initial price schedule and request that ((such)) the posting be placed into effect immediately. The board may grant ((such)) this immediate approval ((provided that such)) if the posting is in compliance with this section and with all other applicable laws and rules ((regulatory requirements, and that contracts and memoranda are on file, in accordance with WAC 314-20-105)).~~

Clarify
language
and
combine
rules.

[Following language from WAC 314-20-105(8)(9), strike through and underlining maintained for comparison]

(8) Accommodation sales - ((Provided, That t)) The provisions of this subsection ~~((shall))~~ do not apply, and filings ~~((will))~~ are not ~~((be))~~ required ~~((in the instance of beer))~~ when distributors make~~((ing))~~ accommodation sales to other beer distributors ~~((when such))~~ and these sales are made at a selling price ~~((not to))~~ that does not exceed the laid-in cost of the beer being sold. Accommodation sales may only be made when the distributor purchasing the beer is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the

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~~supplier. ((, having been designated as an authorized purchaser by the manufacturer or importer of the product being sold, as demonstrated by an existing contract or memoranda on file and in effect under the provisions of this rule)).~~

(9) Consignment sales - ~~((Holders of))~~ ~~((e))~~ Certificate of approval holders may ship beer into this state when the beer has been sold and consigned to the holder of a beer importer's license at ~~((his))~~ the licensed premises. The bill of lading covering ~~((such))~~ this consignment ~~((shall))~~ may not be changed or the beer diverted unless ~~((such))~~ the diversion is to another beer importer, and the certificate of approval holder immediately notifies the board ~~((so notified immediately))~~.

Phil, Do we need this? Neither Randy or Heidi know why it's needed anymore. Would deleting change a current practice?

~~WAC 314 20 105 Beer suppliers' price filings, contracts and memoranda.~~ (1) Every licensed brewer shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral agreement which such brewer may have with any beer distributor, which contracts or memoranda shall contain a schedule of prices charged to distributors for all items, all terms of sale, including all regular and special discounts, all advertising, sales and trade allowances and incentive programs, all commissions, bonuses or gifts and any and all other discounts or allowances. Whenever changed or modified such revised contracts or memoranda shall forthwith be filed with the board as provided in this regulation.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages and containers of beer offered for sale by such licensed brewer; all additional information required may be filed as a supplement to said price schedule forms.

(2) Filing date All written contracts and memoranda of oral agreements must be received by the board not later than the twenty-fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of such filing. An additional period will be allowed for revision of such filings to correct errors and omissions, or to meet competitive prices, filed during the current posting period, but a revised contract or memorandum of oral agreement must be on file with the board not later than the first day of the month in order to become effective on the first day of the following month. Provided, That the board may in individual cases, for good cause shown, extend the date on which the filings required by the rules are to be received by the board.

(a) When any price posting to be filed with the board under the provisions of this rule has been deposited in the United States mail addressed to the board, it shall be deemed filed or received on the date shown by the post office cancellation mark on the envelope containing it, or on the date it was mailed if proof satisfactory to the board establishes that the actual mailing occurred on an earlier date.

(b) Exceptions for changes in distributors and newly licensed distributors are set forth in WAC 314 20 100 (9) and (13).

(3) Filing date exception Whenever the twenty-fifth day of the month falls on Saturday, Sunday, or a legal holiday, an original contract or memorandum of oral agreement may be filed not later than the close of business the next business day.

(4) In the event that a brewer determines to make no changes in any items or prices listed in the last filed and approved schedule, such prices listed in the schedule previously filed and in effect, shall remain in effect for each succeeding posting period until a revised or amended schedule is filed and approved, as provided herein.

Provision for filing of temporary price reductions In the event a licensed brewer elects to file postings listing selected items on which prices are temporarily reduced for a period of one posting period only, such filing shall be made on special forms provided for such purpose and clearly reflect all items, the selling price thereof, and the posting period for which the price reductions will be in effect. At the expiration of the posting period during which such reductions were effective the special filing will become void and the

~~last regularly filed and effective price schedule shall again become effective until subsequently amended pursuant to regular filing dates.~~

~~(5) Prices filed by a licensed brewer shall be uniform prices to all distributors on a statewide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be filed which is below acquisition cost plus ten percent of acquisition cost. Provided, That acquisition cost plus ten percent of acquisition cost shall not apply to sales of beer between a beer importer who sells beer to another beer importer or to a beer distributor, or to a beer distributor who sells beer to another beer distributor.~~

~~(6) No licensed brewer shall sell or offer to sell any beer to any persons whatsoever in this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.~~

~~(7) No licensed brewer shall sell or offer to sell any package or container of beer to any distributor at a price differing from the price for such package or container as shown in the schedule of prices filed by the brewer and then in effect.~~

~~(8) The provisions set forth in the foregoing subsections of this regulation shall also apply to written contracts and memoranda of oral agreements which must be filed with the board by every certificate of approval holder who sells beer to a beer importer, every beer importer who sells beer to another beer importer or to a beer distributor, and every beer distributor who sells beer to another beer distributor. Provided, That the provisions of this subsection shall not apply, and filings will not be required in the instance of beer distributors making accommodation sales to other beer distributors when such sales are made at a selling price not to exceed the laid-in cost of the beer being sold. Accommodation sales may only be made when the distributor purchasing the beer is an authorized purchaser of the brand and product being sold, having been designated as an authorized purchaser by the manufacturer or importer of the product being sold, as demonstrated by an existing contract or memoranda on file and in effect under the provisions of this rule.~~

~~(9) Holders of certificates of approval may ship beer into this state when the beer has been sold and consigned to the holder of a beer importer's license at his licensed premises. The bill of lading covering such consignment shall not be changed or the beer diverted unless such diversion is to another beer importer, and the board so notified immediately.~~

~~(10) The board may reject any supplier's price filing, contract or memorandum of oral agreement or portion thereof which it deems to be in violation of this or any other regulation or which would tend to disrupt the orderly sale and distribution of beer. Whenever the board shall reject any such price filing, contract or memorandum the licensee submitting said price filing, contract or memorandum may be heard by the board and shall have the burden of showing that the said price filing, contract or memorandum is not in violation of regulation and/or does not tend to disrupt the orderly sale and distribution of beer. Thereupon if said price filing, contract or memorandum is accepted it shall become effective at a time fixed by the board. If said price filing, contract or memorandum or portion thereof is rejected, the last effective price filing, contract or memorandum shall remain in effect until such time as an amended price filing, contract or memorandum is filed and approved, in accordance with the~~

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~~provisions of this regulation.~~

~~(11) All prices, contracts and memoranda filed as required by this regulation shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential.~~

Resp to Costco RFP
895

Proposed changes to beer price posting rules to implement SB 6737

How rule would look (without code reviser marks)

WAC 314-20-100 Beer distributor and supplier price postings.
RCW 66.28.180 requires beer distributors and suppliers to file price postings with the board.

(1) **Definitions**--For the purposes of this section:

(a) A beer supplier means a microbrewery, domestic brewery, certificate of approval holder, beer importer, or beer distributor licensee.

(2) **Filing deadlines.**

(a) Beer supplier filing deadlines	(b) Beer distributor filing deadlines
<p>(i) All price postings, distributor appointments, written contracts, and memoranda of oral agreements must be received by the board not later than the twenty-fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of such filing.</p> <p>(ii) The board will allow up to an additional five days for revisions of filings to correct errors and omissions filed during the current posting period, if a revised contract or memorandum of oral agreement is filed with the board not later than the first day of the month. The board may in individual cases, for good cause shown, extend the filing date.</p>	<p>(i) All price postings must be received by the board not later than the tenth day of the month, and if approved will become effective on the first day of the calendar month following the date of filing.</p> <p>(ii) The board will allow up to an additional five days for revisions of postings to correct errors or omissions, if a revised posting is filed with the board not later than the fifteenth day of the month. The board may in individual cases, for good cause shown, extend the filing date.</p>

(c) When any price posting to be filed with the board under the provisions of this rule has been deposited in the United States mail addressed to the board, it will be deemed filed or received on the date shown by the United States post office cancellation mark on the envelope, or on the date it was mailed if it is established to the satisfaction of the board that the actual mailing occurred on an earlier date.

(3) **Filing date exceptions**--Whenever the filing deadlines fall on Saturday, Sunday, or a legal holiday, an original price posting may be filed not later than midnight the next business day.

(4) **No changes from previous month**--If a beer supplier or distributor makes no changes in any items or prices listed in the last filed and approved price posting, these prices will remain in effect for each succeeding posting period until a revised or amended price posting is filed and approved.

(5) **Temporary price reductions**-- If a beer supplier or distributor files price postings that list selected items on which prices are temporarily reduced for one posting period only, these

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price postings must clearly reflect all items, the selling price, and the posting period for which the price reductions will be in effect. At the expiration of the posting period during which the reductions were in effect, the special filing will become void and the last regularly filed and effective price posting will again become effective.

(6) **Distributor appointment changes**--(a) A distributor appointment change is when a supplier terminates and appoints another distributor for a geographic area, for certain brands of beer and/or wine, or terminates and reappoints the entire contract.

(b) A beer supplier must notify the board if any of the contracts or agreements listed in WAC 314-20-100 are revised or terminated by either party. The board may immediately authorize a price posting if a distributor assumes the wholesale price postings from the previously appointed distributor.

(c) Prices and other conditions of price postings in effect at the time of the termination may not be changed until subsequent filings are submitted to the board and become effective.

(7) **Price postings for new distributors**--When the board issues a new beer distributor license, the licensee may file an initial price schedule and request that the posting be placed into effect immediately. The board may grant this immediate approval if the posting is in compliance with this section and with all other applicable laws and rules.

(8) **Accommodation sales**--The provisions of this subsection do not apply, and filings are not required when distributors make accommodation sales to other beer distributors and these sales are made at a selling price that does not exceed the laid-in cost of the beer being sold. Accommodation sales may only be made when the distributor purchasing the beer is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

(9) **Consignment sales** - Certificate of approval holders may ship beer into this state when the beer has been sold and consigned to the holder of a beer importer's license at the licensed premises. The bill of lading covering this consignment may not be changed or the beer diverted unless the diversion is to another beer importer, and the certificate of approval holder immediately notifies the board.

language
we're
checking
into if we
need.

Delete:

WAC 314-20-105 Beer suppliers' price filings, contracts and memoranda.

Resp to Costco RFP
897